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10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA**

12 THERESA BROOKE, a married woman  
13 dealing with her sole and separate claim,

14 Plaintiff,

15 vs.

16 The Meritage Resort, LLC, a California  
17 Limited Liability Company *dba* The  
18 Meritage Resort and Spa,

19 Defendant.

Case No:

**VERIFIED COMPLAINT**

(Jury Trial Demanded)

20 Plaintiff alleges:

21 **PARTIES**

22  
23 1. Plaintiff Theresa Brooke is a married woman currently residing in Pinal  
24 County, Arizona. Plaintiff is and, at all times relevant hereto, has been legally disabled,  
25 confined to a wheel chair, and is therefore a member of a protected class under the  
26 ADA, 42 U.S.C. § 12102(2), the regulations implementing the ADA set forth at 28 CFR  
27 §§ 36.101 et seq., the California Unruh Civil Rights Act, California Civil Code § 51,  
28

52, and the California Disabled Persons Act. Plaintiff ambulates with the aid of a wheelchair due to the loss of a leg.

2. Defendant, The Meritage Resort, LLC, owns and/or operates and does business as the hotel The Meritage Resort and Spa located at 875 Bordeaux Way, Napa, California 94558. The Meritage Resort and Spa is a public accommodation pursuant to 42 U.S.C. § 12181(7)(A), which offers public lodging services.

### **INTRODUCTION**

3. Plaintiff Theresa Brooke brings this action against Defendant, alleging violations of Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., (the “ADA”) and its implementing regulations, the California Unruh Civil Rights Act (“Unruh”), California Civil Code §§51, 52, and the California Disabled Persons Act (“DPA”), California Civil Code §§54-54.3.

4. Plaintiff is a disabled woman confined to a wheelchair. She brings this civil rights action against Defendant for failing to design, construct, and/or own or operate hotel facilities that are fully accessible to, and independently usable by, disabled people. Specifically, Defendant’s hotel, which is a place of public accommodation, has barriers to use of the swimming pool. Defendant’s swimming pool does not have acceptable means of entry for disabled persons, notwithstanding that such modifications are readily achievable. Therefore, Plaintiff seeks a declaration that Defendant’s hotel violates federal law and an injunction requiring Defendant to install means of access in compliance with ADA requirements so that the swimming pool is fully accessible to, and independent usable by, disabled individuals. Plaintiff further requests that, given Defendant’s historical failure to comply with the ADA’s mandate, the Court retain jurisdiction of this matter for a period to be determined to ensure that Defendant comes into compliance with the relevant requirements of the ADA, and to ensure that Defendant has adopted and is following an institutional policy that will, in fact, cause Defendant to remain in compliance with the law.

1           5. In compliance with R10-3-405(H)(1), Plaintiff's address is c/o Peter  
2 Kristofer Strojnik, her attorney, 2415 East Camelback, Suite 700, Phoenix, Arizona  
3 85016.

4                           **JURISDICTION AND VENUE**

5           6. Jurisdiction in this Court is proper pursuant to 28 U.S.C. §§ 1331 and 42  
6 U.S.C. § 12188. The Court has supplemental jurisdiction over the state law claims. 28  
7 U.S.C. § 1367.

8           7. Plaintiff's claims asserted herein arose in this judicial district and  
9 Defendant does substantial business in this judicial district.

10          8. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) and (c)  
11 in that this is the judicial district in which a substantial part of the acts and omissions  
12 giving rise to the claims occurred.

13                           **THE ADA AND ITS IMPLEMENTING REGULATIONS**

14          9. On July 26, 1990, President George H.W. Bush signed into law the ADA,  
15 a comprehensive civil rights law prohibiting discrimination on the basis of disability.

16          10. The ADA broadly protects the rights of individuals with disabilities in  
17 employment, access to State and local government services, places of public  
18 accommodation, transportation, and other important areas of American life.

19          11. Title III of the ADA prohibits discrimination in the activities of places of  
20 public accommodation and requires places of public accommodation to comply with  
21 ADA standards and to be readily accessible, and independently usable by, individuals  
22 with disabilities. 42 U.S.C. § 12181-89.

23          12. On July 26, 1991, the Department of Justice ("DOJ") issued rules  
24 implementing Title III of the ADA, which are codified at 28 CFR Part 36.

25          13. Appendix A of the 1991 Title III regulations (republished as Appendix D  
26 to 28 CFR part 36) contains the ADA standards for Accessible Design (1991  
27 Standards), which were based upon the Americans with Disabilities Act Accessibility  
28 Guidelines (1991 ADAAG) published by the Access Board on the same date.

1           14. In 1994, the Access Board began the process of updating the 1991  
2 ADAAG by establishing a committee composed of members of the design and  
3 construction industries, the building code community, and State and local governmental  
4 entities, as well as individuals with disabilities.

5           15. In 1999, based largely on the report and recommendations of the advisory  
6 committee, the Access Board issued a notice of proposed rulemaking to update and  
7 revise its ADA and ABA Accessibility Guidelines.

8           16. The Access Board issued final publication of revisions to the 1991  
9 ADAAG on July 23, 2004 (“2004 ADAAG”).

10           17. On September 30, 2004, the DOJ issued an advanced notice of proposed  
11 rulemaking to begin the process of adopting the 2004 ADAAG.

12           18. On June 17, 2008, the DOJ published a notice of proposed rulemaking  
13 covering Title III of the ADA.

14           19. The long-contemplated revisions to the 1991 ADAAG culminated with  
15 the DOJ’s issuance of The 2010 Standards for Accessible Design (“2010 Standards”).  
16 The DOJ published the Final Rule detailing the 2010 Standards on September 15, 2010.  
17 The 2010 Standards consist of the 2004 ADAAG and the requirements contained in  
18 subpart D of 28 CFR part 36.<sup>1</sup>

19           20. Notably, the lodging industry requested and received a number of  
20 extensions of time before the mandatory requirements of Section 242.2 of the 2010  
21 Standards, concerning access to pools, became effective. Notwithstanding, the industry  
22 remains largely noncompliant with the requirements.

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<sup>1</sup> Though the Effective Date of the 2010 Standards was March 15, 2011, the deadline for existing pools to comply did not become effective until January 31, 2013, at which time the 2010 Standards became enforceable through civil actions by private plaintiffs.

**THE CALIFORNIA UNRUH CIVIL RIGHTS ACT and**  
**THE CALIFORNIA DISABLED PERSONS ACT**

21. Unruh and the DPA incorporate ADA standards, so a “violation of the ADA also constitutes a violation of both the Unruh Act and the DPA.” *Californians for Disability Rights v. Mervyn’s LLC*, 165 Cal. App. 4<sup>th</sup> 571, 586, 81 Cal. Rptr. 3d 144 (2008); *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 731 (9<sup>th</sup> Cir. 2007).

22. Unruh provides for injunctive relief, monetary damages in an amount not less than \$4,000.00, and for the recovery of attorney’s fees and costs.

23. The DPA provides for monetary damages in an amount not less than \$1,000.00 and for the recovery of attorney’s fees and costs.

**ALLEGATIONS COMMON TO ALL COUNTS**

24. Pursuant to CFR 36-302(1)(ii), on or about January 14, 2016, Plaintiff contacted Defendant’s hotel for purposes of booking a room. Plaintiff inquired whether Defendant’s hotel pool or Jacuzzi (“pool”) had a pool lift or other means of access for disabled persons such as Plaintiff. Defendant’s representative stated that both the hotel swimming pool and Jacuzzi did not have a pool lift or other means of access. Accordingly, Plaintiff had actual notice or actual knowledge of the barriers.

25. Plaintiff’s agent, an expert in ADA accessibility guidelines, as part of due diligence investigation, independently verified that the swimming pool did not have a pool lift. Plaintiff’s agent reported the lack of accessibility to Plaintiff and provided Plaintiff with photographs demonstrating the lack of accessibility, and therefore Plaintiff had actual notice or actual knowledge of the barriers. But for these barriers, Plaintiff would lodge with Defendant in the near future.

26. Plaintiff has personal knowledge of at least two barriers related to her disability, that is, swimming pool is inaccessible to her by virtue of her confinement to a wheel chair, and is currently deterred from visiting Defendant’s accommodation by this accessibility barrier. Therefore, she has suffered an injury-in-fact for the purpose of her standing to bring this action.

1           27. Other potential violations and barriers to entry may be discovered through  
2 the discovery process, which, if discovered, Plaintiff shall seek to allege further ADA,  
3 Unruh and DPA violations. *See Doran v. 7-Eleven*, 524 F.3d 1034 9<sup>th</sup> Cir. 2008)  
4 (plaintiff need only allege one instance of ADA violation to achieve standing, but is  
5 permitted to then challenge other ADA violations found in the course of discovery).

6           28. Without the presence of a fixed pool lift or other means of permitting  
7 Plaintiff equal access to the swimming pool, Plaintiff's disability prevents her from  
8 equal enjoyment of the swimming pool.

9           29. Plaintiff intends to travel to the location of the Defendant's place of  
10 public accommodation in the future for business, pleasure or medical treatment.

11           30. As a result of Defendant's non-compliance with the ADA, Plaintiff will  
12 avoid and not stay at the Defendant's place of accommodation in the future.

13           31. The existence of barriers to use the swimming pool at Defendant's hotel  
14 deterred Plaintiff from staying or returning to seek accommodations at Defendant's  
15 hotel. Upon information and belief, other disabled persons were deterred from staying  
16 there or otherwise precluded from using the pool as guests due to the absence of a pool  
17 lift.

18           32. As a result of Defendant's non-compliance with the ADA, Plaintiff,  
19 unlike persons without disabilities, cannot independently use Defendant's swimming  
20 pool.

21           33. In violation of Section 242.2 of the 2010 ADA Standards, Defendant's  
22 swimming pool does not have at least one accessible means of entry in complying with  
23 Sections 1009.2 or 1009.3.

24           34. Plaintiff wishes to travel to the location of Defendant's place of public  
25 accommodation for personal, business and/or medical treatment and wants to stay in  
26 hotels there. But for the presence of architectural barriers at Defendant's hotel, Plaintiff  
27 would consider staying at the Defendant's hotel.  
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1           35. Upon information and belief, though Defendant has centralized policies  
2 regarding the management and operating of its hotel, Defendant does not have a plan or  
3 policy that is reasonably calculated to make its entire hotel fully accessible to and  
4 independently usable by, disabled people.

5           36. Plaintiff verified that Defendant's hotel lacks the mandatory elements  
6 required by the 2010 Standards to make pools fully accessible to and independently  
7 usable by disabled people.

8           37. As a disabled person, Plaintiff has a keen interest in whether public  
9 accommodations that offer public lodging services are fully accessible to, and  
10 independently usable by, the disabled, specifically including an interest in ensuring that  
11 pools and spas possess all of the features required by the 2010 Standards.

12           38. Plaintiff, or an agent of Plaintiff, intends to return to Defendant's hotel to  
13 ascertain whether it remains in violation of the ADA.

14           39. Plaintiff and other disabled persons have been injured by Defendant's  
15 discriminatory practices and failure to remove architectural barriers. These injuries  
16 include being deterred from using Defendant's facilities due to the inaccessibility of  
17 Defendant's pool and the denial of the opportunity to use said pool.

18           40. Without injunctive relief, Plaintiff and others will continue to be unable to  
19 independently use Defendant's hotel pool in violation of her rights under the ADA.

20                           **FIRST CAUSE OF ACTION**  
21                           **(Violation of Title III the Americans with Disabilities Act)**

22           41. Plaintiff incorporates all allegations heretofore set forth.

23           42. Defendant has discriminated against Plaintiff and others in that it has  
24 failed to make its public lodging services fully accessible to, and independently usable  
25 by, individuals who are disabled in violation of 42 U.S.C. § 12182(a) and §  
26 12182(b)(2)(iv) and Section 242.2 of the 2010 Standards, as described above.

27           43. Defendant has discriminated against Plaintiff in that it has failed to  
28 remove architectural barriers to make its lodging services fully accessible to, and

1 independently usable by individuals who are disabled in violation of 42 U.S.C.  
2 §12182(b)(A)(iv) and Section 242.2 of the 2010 Standards, as described above.  
3 Compliance with the requirements of section 242.2 of the 2010 Standards would neither  
4 fundamentally alter the nature of Defendant's lodging services nor result in an undue  
5 burden to Defendant.

6 44. In violation of Section 242.2 of the 2010 Standards, Defendant's  
7 swimming pool does not have at least one accessible means of entry complying with  
8 Sections 1009.2 or 1009.3.

9 45. Pursuant to Section 44 of the IRS Code, Defendant may be able to obtain  
10 a tax credit and tax deduction where it complies with the ADA. *See generally* Dep't of  
11 Justice, *Questions and Answers: Accessibility Requirements for Existing Swimming*  
12 *Pools at Hotels and Other Public Accommodations* (Mar. 1, 2013)<sup>2</sup>. The tax credit is  
13 available to businesses that have total revenues of \$1,000,000 or less in the previous tax  
14 year or 30 or fewer full-time employees. This credit can cover 50% of the eligible  
15 access expenditures in a year up to \$10,250 (maximum credit of \$5,000). The tax credit  
16 can be used to offset the cost of undertaking barrier removal and alterations to improve  
17 accessibility. The tax deduction can be claimed for expenses incurred in barrier removal  
18 and alterations. *Id.*

19 46. Compliance with 42 U.S.C. § 12182(b)(2)(A)(iv) and Section 242.2 of the  
20 2010 Standards, as described above, is readily achievable by the Defendant due to the  
21 low costs of installing a fixed pool lift or lifts. *Id.* Readily achievable means that  
22 providing access is easily accomplishable without significant difficulty or expense.

23 47. Conversely, the cessation of compliance with the ADA law is also readily  
24 achievable by the removal of a fixed lift. Therefore, injunctive relief should issue  
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28 <sup>2</sup> [http://www.ada.gov/qa\\_existingpools\\_titleiii.htm](http://www.ada.gov/qa_existingpools_titleiii.htm)



1 irrespective of Defendant's potential voluntary cessation pursuant to the Supreme  
2 Court's announcement in *Friends of the Earth* case<sup>3</sup>.

3 48. Defendant's conduct is ongoing, and, given that Defendant has never  
4 complied with the ADA's requirements that public accommodations make lodging  
5 services fully accessible to, and independently usable by, disabled individuals, Plaintiff  
6 invokes her statutory right to declaratory and injunctive relief, as well as costs and  
7 attorneys' fees.

8 49. Without the requested injunctive relief, specifically including the request  
9 that the Court retain jurisdiction of this matter for a period to be determined after the  
10 Defendant certifies that it is fully in compliance with the mandatory requirements of the  
11 ADA that are discussed above, Defendant's non-compliance with the ADA's  
12 requirements that its pool be fully accessible to, and independently useable by, disabled  
13 people is likely to recur.

14 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 15 a. A Declaratory Judgment that at the commencement of this action  
16 Defendant was in violation of the specific requirements of Title III of the  
17 ADA described above, and the relevant implementing regulations of the  
18 ADA, in that Defendant took no action that was reasonably calculated to  
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20 <sup>3</sup> *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs., Inc.*, 528 U.S. 167, 189, 120 S.Ct.  
21 693, 145 L.Ed.2d 610 (2000):

22 It is well settled that a defendant's voluntary cessation of a challenged  
23 practice does not deprive a federal court of its power to determine the  
24 legality of the practice. If it did, the courts would be compelled to leave the  
25 defendant free to return to his old ways. In accordance with this principle,  
26 the standard we have announced for determining whether a case has been  
27 mooted by the defendant's voluntary conduct is stringent: A case might  
28 become moot if subsequent events made it absolutely clear that the  
allegedly wrongful behavior could not reasonably be expected to recur. The  
heavy burden of persuading the court that the challenged conduct cannot  
reasonably be expected to start up again lies with the party asserting  
mootness.

1 ensure that all of its pools were fully accessible to, and independently  
2 usable by, disabled individuals;

3 b. Irrespective of Defendants “voluntary cessation” of the ADA violation, if  
4 applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2)  
5 and 28 CFR § 36.504(a) which directs Defendant to take all steps  
6 necessary to bring its pools into full compliance with the requirements set  
7 forth in the ADA, and its implementing regulations, so that the pools are  
8 fully accessible to, and independently usable by, disabled individuals,  
9 specifically including a pool lift as required by Sections 242.2 and 1009.2  
10 of the 2010 Standards, and which further directs that the Court shall retain  
11 jurisdiction for a period to be determined after Defendant certifies that its  
12 pool is fully in compliance with the relevant requirements of the ADA to  
13 ensure that Defendant has adopted and is following an institutional policy  
14 that will in fact cause Defendant to remain fully in compliance with the  
15 law;

16 c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if  
17 applicable, payment of costs of suit;

18 d. Irrespective of Defendants “voluntary cessation” of the ADA violation, if  
19 applicable, payment of attorneys’ fees pursuant to 42 U.S.C. § 12205, 28  
20 CFR § 36.505 and other principles of law and equity and in compliance  
21 with the “prevailing party” and “material alteration” of the parties’  
22 relationship doctrines<sup>4</sup> in an amount no less than \$3,500.00; and,

23 e. Order closure of the Defendant’s place of public accommodation until  
24 Defendant has fully complied with the ADA; and

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<sup>4</sup> As applicable to ADA cases, see *Coppi v. City of Dana Point*, Case No. SACV 11-1813 JGB (RNBx) (February, 2015)

1 f. The provision of whatever other relief the Court deems just, equitable and  
2 appropriate.

3 **SECOND CAUSE OF ACTION**  
4 **(Violation of the California Unruh Civil Rights Act, Cal. Civ. Code §§51, 52)**

5 50. Plaintiff realleges all allegations heretofore set forth.

6 51. Defendant has violated the Unruh by denying Plaintiff equal access to its  
7 public accommodation on the basis of her disability as outlined above.

8 52. Unruh provides for declaratory and monetary relief to “aggrieved  
9 persons” who suffer from discrimination on the basis of their disability.

10 53. Plaintiff has been damaged by the Defendant’s non-compliance with  
11 Unruh.

12 54. Pursuant to Cal Civ. Code §52, Plaintiff is further entitled to such other  
13 relief as the Court considers appropriate, including monetary damages in an amount to  
14 be proven at trial, but in no event less than \$4,000.00.

15 55. Pursuant to Unruh, Plaintiff is entitled to attorney’s fees and costs in an  
16 amount to be proven at trial.

17 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 18 a. A Declaratory Judgment that at the commencement of this action  
19 Defendant was in violation of the specific requirements of Unruh; and  
20 b. Irrespective of Defendants “voluntary cessation” of the ADA violation, if  
21 applicable, a permanent injunction pursuant to Unruh which directs  
22 Defendant to take all steps necessary to bring its pools into full  
23 compliance with the requirements set forth in the Unruh, and its  
24 implementing regulations, so that the pools are fully accessible to, and  
25 independently usable by, disabled individuals, specifically including a  
26 pool lift as required by law, and which further directs that the Court shall  
27 retain jurisdiction for a period to be determined after Defendant certifies  
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that its pool is fully in compliance with the relevant requirements of the Unruh to ensure that Defendant has adopted and is following an institutional policy that will in fact cause Defendant to remain fully in compliance with the law; and

- c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, the payment of costs of suit; and
- d. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, the payment of attorneys’ fees;
- e. Order closure of the Defendant’s place of public accommodation until Defendant has fully complied with the Unruh; and
- f. For damages in an amount no less than \$4,000.00; and
- g. The provision of whatever other relief the Court deems just, equitable and appropriate.

### **THIRD CAUSE OF ACTION**

**(Violation of the California Disabled Persons Act, Cal. Civ. Code §§54-54.3)**

56. Plaintiff realleges all allegations heretofore set forth.

57. Defendant has violated the DPA by denying Plaintiff equal access to its public accommodation on the basis of her disability as outlined above.

58. The DPA provides for monetary relief to “aggrieved persons” who suffer from discrimination on the basis of their disability.

59. Plaintiff has been damaged by the Defendant’s non-compliance with the DPA.

60. Pursuant to the DPA, Plaintiff is further entitled to such other relief as the Court considers appropriate, including monetary damages in an amount to be proven at trial, but in no event less than \$1,000.00. Cal. Civ. Code § 54.3.

61. Pursuant to the DPA, Plaintiff is entitled to attorney’s fees and costs in an amount to be proven at trial. Cal. Civ. Code § 54.3.

1 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 2 a. A Declaratory Judgment that at the commencement of this action  
3 Defendant was in violation of the specific requirements of Unruh; and  
4 b. Irrespective of Defendants “voluntary cessation” of the ADA violation, if  
5 applicable, a permanent injunction pursuant to Unruh which directs  
6 Defendant to take all steps necessary to bring its pools into full  
7 compliance with the requirements set forth in the Unruh, and its  
8 implementing regulations, so that the pools are fully accessible to, and  
9 independently usable by, disabled individuals, specifically including a  
10 pool lift as required by law, and which further directs that the Court shall  
11 retain jurisdiction for a period to be determined after Defendant certifies  
12 that its pool is fully in compliance with the relevant requirements of the  
13 Unruh to ensure that Defendant has adopted and is following an  
14 institutional policy that will in fact cause Defendant to remain fully in  
15 compliance with the law; and  
16 c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if  
17 applicable, the payment of costs of suit; and  
18 d. Irrespective of Defendants “voluntary cessation” of the ADA violation, if  
19 applicable, the payment of attorneys’ fees;  
20 e. Order closure of the Defendant’s place of public accommodation until  
21 Defendant has fully complied with the DPA; and  
22 f. For damages in an amount no less than \$1,000.00; and  
23 g. The provision of whatever other relief the Court deems just, equitable and  
24 appropriate.

25 **DEMAND FOR JURY TRIAL**

26 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby  
27 demands a jury trial on issues triable by a jury.  
28

1 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of January, 2016.

2 **THE STROJNIK FIRM L.L.C.**

3  
4  
5 /s/ Peter Kristofer Strojnik  
6 Peter Kristofer Strojnik (242728)  
7 2415 East Camelback Road, Suite 700  
8 Phoenix, Arizona 85016  
9 Attorneys for Plaintiff

10 **VERIFICATION COMPLIANT WITH R10-3-405**

11 I declare under penalty of perjury that the foregoing is true and correct.

12 DATED this 25<sup>th</sup> day of January, 2016.

13 /s/ *Theresa Brooke*

14 Electronic Signature Authorized  
15 Theresa Brooke  
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